

1 **LEVI & KORSINSKY, LLP**

2 Adam M. Apton (SBN 316506)

3 Adam C. McCall (SBN 302130)

388 Market Street, Suite 1300

San Francisco, CA 94111

4 Tel : 415-373-1671

5 Email: aapton@zlk.com

amccall@zlk.com

6 *Attorneys for Lead Plaintiff and the Class*

7 *[Additional Counsel on Signature Block]*

8

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **SAN FRANCISCO DIVISION**

12 IN RE TESLA, INC. SECURITIES) Case No. 3:18-cv-04865-EMC
13 LITIGATION)
14) **JOINT CASE MANAGEMENT
15) STATEMENT AND [PROPOSED]
16) ORDER**

1 Lead Plaintiff Glen Littleton (“Lead Plaintiff”), and Defendants Tesla, Inc., Elon R. Musk,
 2 Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal
 3 Musk, and Linda Johnson Rice (“Defendants”) (collectively, Lead Plaintiff and Defendants are
 4 referred to as the “Parties”) submit this Joint Case Management Statement pursuant to Federal
 5 Rule of Civil Procedure 26(f), the Standing Order for All Judges of the Northern District of
 6 California dated November 1, 2018, and Civil Local Rule 16-9.

7 **I. JURISDICTION AND SERVICE**

8 The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §1331 and
 9 §27A of the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. §78aa). Defendants
 10 have waived service of process. Defendants do not contest subject matter jurisdiction, personal
 11 jurisdiction or venue. No parties remain to be served and Defendants have stipulated to answer
 12 on June 15, 2020.

13 **II. FACTS**

14 **A. Overview**

15 Lead Plaintiff incorporates by reference the factual allegations set forth in detail in his
 16 Consolidated Class Action Complaint for Violations of the Federal Securities Laws
 17 (“Complaint”) filed on January 16, 2019. (ECF No. 184). In general, Lead Plaintiff alleges that,
 18 during the proposed class period (August 7 – August 17, 2018), certain statements by Mr. Musk
 19 and/or Tesla concerning a potential take-private transaction were materially false or misleading
 20 (including omissions of alleged facts), in violation of Section 10(b) of the Securities Exchange
 21 Act of 1934 (the “1934 Act”). Lead Plaintiff further alleges that the director defendants bear
 22 liability as control persons of Tesla under Section 20(a) of the 1934 Act.

23 Defendants deny Lead Plaintiff’s allegations and deny that any of them bear liability to
 24 Lead Plaintiff or the alleged class.

25 **B. Principal Factual Issues in Dispute**

26 Defendants have not yet answered the Complaint, but the Parties anticipate that the factual
 27 issues in dispute will include:

28 1. Whether certain alleged statements made by Musk and/or Tesla from August 7,

18 to August 13, 2018 materially misrepresented the status of the proposed
 going private transaction;

2. Whether statements made by Musk are attributable to Tesla;
3. Whether Musk knew or was deliberately reckless in making his statements regarding a going private transaction from August 7, 2018 to August 13, 2018;
4. Whether Musk's motive in making statements regarding the going private transaction was to harm short sellers of Tesla's stock;
5. Whether the market for Tesla's common stock or other securities was efficient so that the Class is entitled to a presumption of reliance under *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988);
6. Whether and/or to what extent alleged misstatements made by Musk and/or Tesla from August 7, 2018 to August 17, 2018 affected the price of Tesla's common stock and other securities;
7. Whether Lead Plaintiff and other members of the Class suffered damages and the amount of those damages.
8. Whether the director Defendants acted as control persons of Tesla from August 7, 2018 to August 17, 2018.
9. Whether Lead Plaintiff's claims and defenses are typical of the claims and defenses of the Class.
10. Whether Lead Plaintiff will fairly and adequately protect the interests of the Class.

11. **III. LEGAL ISSUES**

12. The principal disputed points of law are set forth in detail with relevant case law in the motion to dismiss briefing and the Order (ECF Nos. 227, 231, 237, & 251).

13. **IV. MOTIONS**

14. The following motions have been filed in this action:

1. On October 9, 2018, nine competing Motions for Consolidation of the Related Actions, and Motions to Appoint Lead Plaintiff and Lead Counsel were filed. ECF Nos. 40, 41, 45, 46, 47, 64, 71, 74, 80. On November 27, 2018, the Court consolidated the actions and entered an order appointing Lead Plaintiff and approving his selection of Lead Counsel. ECF No. 152.
2. On November 30, 2018, movant Dany David filed a motion for reconsideration of the Court's Order granting Lead Plaintiff's Motion for Appointment as Lead Plaintiff and Selection of Lead Counsel. ECF No. 156. On December 3, 2018, movant Bridgestone Investment Corporation Limited ("Bridgestone") filed a motion for reconsideration of the Court's Order granting Lead Plaintiff's Motion for Appointment as Lead Plaintiff and Selection of Lead Counsel. ECF No. 158. On December 17, 2018 the Court denied the motions for reconsideration (ECF No. 172), and thereafter, on January 16, 2019, Lead Plaintiff filed the Consolidated Class Action Complaint for Violations of the Federal Securities Laws ("Complaint") ECF No. 184.

- 1 3. On December 12, 2018, Lead Plaintiff filed a motion to serve non-party
2 preservation subpoenas. The Court granted Lead Plaintiff's motion to serve non-
3 party preservation subpoenas on January 15, 2019.
- 4 4. On January 4, 2019, Bridgestone filed a Petition for Writ of Mandamus with the
5 United States Court of Appeals for the Ninth Circuit following the district court's
6 selection of lead plaintiff. On March 22, 2019 Defendants filed an Administrative
7 Motion for Relief From Case Schedule Pending Lead Plaintiff Proceedings In The
8 Ninth Circuit. ECF No. 199. On March 22, 2019, movant Bridgestone also filed a
9 Motion to Stay Proceedings. ECF No. 201. The Court granted Defendants'
10 Administrative Motion for Relief on March 22, 2019 (ECF No. 203) and
11 Bridgestone's Motion to Stay on April 15, 2019 (ECF No. 211). On October 8,
12 2019, the United States Court of Appeals for the Ninth Circuit denied
13 Bridgestone's petition. ECF No. 218.
- 14 5. On November 22, 2019, Defendants filed a Motion to Dismiss the Complaint. ECF
15 No. 227. On December 27, 2019, Lead Plaintiff filed a Motion to Strike or Convert
16 Defendants' Motion to Summary Judgement. ECF No. 233. On April 15, 2020,
17 the Court Denied Lead Plaintiff's Motion to Convert or Alternatively to Strike,
18 and Denied Defendant's Motion to Dismiss. ECF No. 251.
- 19 6. Lead Plaintiff intends to file a motion for class certification under Rule 23 as set
20 forth in the Stipulated Schedule in §II.17 below.
- 21 7. Lead Plaintiff may file a motion for summary judgment, but believes that it is too
22 early to determine whether it ultimately will file for summary judgment or any
23 additional motions absent the benefit of discovery. Defendants intend to file a
24 motion for summary judgment.

15 **V. AMENDMENT OF PLEADINGS**

16 Lead Plaintiff filed the consolidated Complaint on January 16, 2019 following its
17 appointment as Lead Plaintiff. Lead Plaintiff may seek Defendants' consent or leave of Court to
18 amend the Complaint to add defendants, or alter claims to conform with the facts, but has no
19 current plan for further amendment at this time.

20 **VI. EVIDENCE PRESERVATION**

21 The Parties have reviewed the Court's Guidelines Relating to the Discovery of
22 Electronically Stored Information and, as set forth below, have met and conferred regarding initial
23 steps to preserve evidence. Each Party represents that it has instituted reasonable document
24 retention procedures so as to maintain any relevant documents, electronic or otherwise, or any
25 other relevant electronically recorded material, until this dispute is resolved.

1 **VII. DISCLOSURES**

2 Pursuant to Rule 26(a)(1)(C), the Parties will exchange their initial disclosures on June
 3 30, 2020.

4 **VIII. DISCOVERY**

5 No discovery has been taken to date. With respect to anticipated discovery, the Parties
 6 agree that discovery should be orderly and focused.

7 **A. Lead Plaintiff**

8 Lead Plaintiff intends to pursue discovery from Defendants, Tesla employees, and non-
 9 parties concerning, *inter alia*:

- 10 1. The “going-private” transaction announced by Musk on August 7, 2018, including
 11 whether and to what extent the transaction was discussed and by whom prior to
 and after Musk’s announcement;
- 12 2. Terms concerning the “going-private” transaction, including price, contingencies,
 13 partners, structure, and restrictions;
- 14 3. Potential funding sources for the “going-private” transaction;
- 15 4. Musk’s motivations and desires to harm “short-sellers”;
- 16 5. Musk’s Twitter account;
- 17 6. Board and shareholder support for the “going-private” transaction;
- 18 7. Statements made by or on behalf of Tesla about the “going-private” transaction,
 19 including public and private communications with analysts, investors, and
 government agencies;
- 20 8. Investigations by government agencies concerning the “going-private”
 21 transaction, including the SEC and DOJ;
- 22 9. The price of Tesla securities during the Class Period;
- 23 10. Damages suffered by Tesla investors during and after the Class Period, including
 24 short sellers, option purchasers and sellers, convertible bonds, and credit default
 swaps;
- 25 11. Tesla’s policies and practices regarding the preparation, approval, and
 26 dissemination of information;
- 27 12. Tesla’s and Musk’s policies and practices regarding document retention and
 28 preservation;
13. Tesla’s operational and organizational structure;

1 14. Tesla's compensation structure;

2 15. Any denial or affirmative defenses set forth in Defendants' answer to be filed on

3 June 15, 2020; and

4 16. Any other matters relevant to the allegations in the Complaint.

5 Among non-parties, Lead Plaintiff may pursue discovery from The Goldman Sachs
 6 Group, Inc. or its affiliates, Morgan Stanley or its affiliates, Silver Lake Management, L.L.C. or
 7 its affiliates, the SEC, the DOJ, the Saudi Arabia Public Investment Fund, Claire Elise Boucher,
 8 known professionally as Grimes, Azealia Amanda Banks, The New York Times, The Wall Street
 9 Journal, Gizmodo, Twitter, Inc., Defendants' cell phone service providers and internet service
 10 providers, financial analysts, including JP Morgan, RBC Capital Markets, Morningstar Equity
 11 Research, Jefferies, and Evercore, media outlets, including the *New York Times*, *Wall Street*
 12 *Journal*, *Bloomberg*, and *Financial Times*, brokerage firms that executed Tesla investors' trades
 13 from August 7, 2018 to August 17, 2018, institutional investors who discussed the potential going
 14 private transaction with Musk any other Tesla representative, and former employees, of Tesla.

15 Lead Plaintiff reserves the right to object to discovery on any or all of Defendants' listed
 16 topics as well as to seek discovery on other topics not listed above.

17 **B. Defendants**

18 Defendants anticipate they will seek discovery from and take the deposition of Lead
 19 Plaintiff and his investment advisor(s), certain non-parties including, but not limited to, certain
 20 short sellers, but are still in the process of evaluating their needs and will make determinations as
 21 the case proceeds.

22 **C. Proposed Modifications of the Discovery Rules**

23 Without waiving any rights to seek leave for additional discovery, Lead Plaintiff believes
 24 that based on the case's complexity and the numerous witnesses and non-parties already known
 25 to be relevant, the initial deposition limit should be set at twenty-five (25). Lead Plaintiff does
 26 not propose any other modifications of the Discovery Rules. Defendants believe that the
 27 presumptive limit on depositions should apply.

1 **D. Protective Order**

2 On May 20, 2020, the Court Granted the Parties' stipulated protective order governing the
 3 treatment confidential or otherwise protected materials in this action. ECF No. 255.

4 **E. Proposed Discovery Plan Pursuant to Fed. R. Civ. P. 26(f)**

5 **1. **Fed. R. Civ. P. 26(f)(3)(A) – Rule 26(a)(1)(A-D) Disclosures****

6 Pursuant to Fed. R. Civ. P. 26(a)(1)(C), the service of initial disclosures shall occur on or
 7 before June 30, 2020.

8 **2. **Fed. R. Civ. P. 26(f)(3)(B) – Anticipated Scope of Discovery****

9 *See §VIII.A-B, supra.*

10 **3. **Fed. R. Civ. P. 26(f)(3)(C) - Electronically Stored Information****

11 In accordance with Federal Rule 26(f)(3)(C), the Parties have discussed electronically
 12 stored information. As guiding principles, the Parties agree to meet and confer in good faith
 13 concerning issues that arise with respect to the disclosure or discovery of electronically stored
 14 information, including with respect to the form of production of electronically stored information
 15 and metadata.

16 **4. **Fed. R. Civ. P. 26(f)(3)(D) – Privilege Issues****

17 In accordance with Fed. R. Civ. P. 26(f)(3)(D), the parties have discussed privilege and
 18 protection issues. The Court entered a stipulated protective order that includes an appropriate non-
 19 waiver provision pursuant to Federal Rule of Evidence 502(d).

20 **5. **Fed. R. Civ. P. 26(f)(3)(E) – Changes to Discovery Limitations****

21 *See §VIII.C, supra.*

22 **6. **Fed. R. Civ. P. 26(f)(3)(F) – Other Discovery & Scheduling Orders****

23 In accordance with Fed. R. Civ. P. 26(f)(3)(F), the Parties have discussed the need for
 24 other discovery or scheduling orders under Rule 26(c), 16(b), and 16(c). The Court has entered a
 25 stipulated protective order.

26 **F. Identified Discovery Disputes**

27 At this time, the Parties have identified no discovery disputes but agree to meet and confer
 28 in good faith if any dispute arises.

1 **IX. CLASS ACTIONS**

2 Lead Plaintiff seeks to maintain this action as a class action pursuant to Rule 23(a) and
 3 (b)(3). The Complaint defines the Class as shareholders who purchased or sold Tesla securities
 4 from August 7, 2018 to August 17, 2018 and were damaged thereby. Excluded from the Class are
 5 Defendants and their immediate families, the officers and directors of Tesla, at all relevant times,
 6 and members of their immediate families, and their legal representatives, heirs, successors or
 7 assigns, and any entity in which Defendants have or had a controlling interest. Lead Plaintiff will
 8 move for class certification in accordance with the schedule set forth in §II.17 below. All counsel
 9 of record for the Parties have reviewed the Procedural Guidance for Class Action Settlements.

10 **X. RELATED CASES**

11 There are currently seven putative derivative actions pending in Delaware state and federal
 12 court seeking to assert claims based on the transactions and events at issue in this action
 13 (*Laborers' District Council Contractors' Pension Fund of Ohio v. Musk*, C.A. No. 2019-0187-
 14 JRS; *Elton v. Musk*, 2018-0749-JRS; *Seidman v. Musk*, No. 2018-0775-JRS; *Krol v. Musk*, 2018-
 15 0802-JRS; *Dixon v. Musk*, 2018-0806-JRS; *Doris Shenwick Trust v. Musk*, 2018-0823-JRS; and
 16 *In re Tesla, Inc. S'holder Deriv. Litig.*, 1:18-cv-01669-CFC (D. Del.) (consolidating two actions)).
 17 Also pending in Delaware Chancery Court is *Gharrity v. Tesla, Inc.*, C.A. No. 2019-0217-JRS, a
 18 suit seeking inspection of Tesla's books and records relating to the events alleged by Lead
 19 Plaintiff in the Complaint.

20 **XI. RELIEF**

21 The Complaint asserts claims under §§10(b) and 20(a) of the Exchange Act, and Rule
 22 10b-5 promulgated thereunder, and seeks, *inter alia*: (1) an Order declaring this action to be a
 23 proper class action pursuant to Rule 23; (2) damages, including prejudgment and post-judgment
 24 interest; (3) reasonable costs and expenses incurred in this action, including attorneys' fees; and
 25 (4) such other relief as the Court may deem just and proper. The calculation of damages in this
 26 complex securities fraud class action will be the subject of expert opinion and requires further
 27 factual discovery. Defendants believe that Lead Plaintiff and any purported class are not entitled
 28 to any relief.

12 XII. SETTLEMENT AND ADR

13 The Parties have met and conferred regarding ADR and agree that settlement negotiations
 14 would be premature at this time.

15 XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

16 The Parties do not consent to a Magistrate Judge for trial.

17 XIV. OTHER REFERENCES

18 The Parties do not believe this case is suitable for reference to binding arbitration, a special
 19 master, or the Judicial Panel on Multidistrict Litigation.

20 XV. NARROWING OF ISSUES

21 At this early stage, the Parties are not aware of any issues that can be narrowed by
 22 agreement or by motion, do not have any suggestions to expedite the presentation of evidence at
 23 trial, and do not agree to bifurcate issues, claims, or defenses.

24 XVI. EXPEDITED TRIAL PROCEDURE

25 The Parties do not believe this case is appropriate to be handled under the Expedited Trial
 26 Procedure of General Order No. 64.

27 XVII. SCHEDULING

28 Consistent with the anticipated motions, and the nature and demands of this case, the
 29 Parties propose the following schedule:

Event	Proposed Dates
Answer	June 15, 2020 (per Order)
Exchange Initial Disclosures	June 30, 2020
Class Certification Motion	September 22, 2020
Opposition to Class Certification Motion	November 23, 2020
Reply in support of Class Certification Motion	January 6, 2021
Hearing on Class Certification	Late January (January 28, 2021)
Fact Discovery Deadline	Mid-June 2021 (June 15, 2021)
Expert Reports Deadline	Mid-July 2021 (July 14, 2021)
Rebuttal Expert Reports Deadline	42 days after expert reports (August 25, 2021)
Expert Discovery Deadline	September 2021 (September 15, 2021)
Last Day to File Dispositive Motions	October 2021 (October 15, 2021)

1	Opposition to Dispositive Motions	November 2021 (November 23, 2021)
2	Reply in Further Support of Dispositive Motions	December 2021 (December 23, 2021)
3	Hearing Date on Dispositive Motions	January 2022 (January 20, 2022)
4	Meet and Confer	21 days before Pretrial Conference Statement due
5	Joint Pretrial Conference Statement / Trial Briefs Objections	21 days before Pretrial Conference 10 days before Pretrial Conference
6	Pre-Trial Conference	4 Tuesdays prior to trial at 2:30 pm
7	Trial	April or May 2022 (as set by the Court)

8 **XVIII. TRIAL**

9 This case will be tried to a jury. The Parties presently anticipate 10 days for trial..

10 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

11 On September 4, 2018, Defendants filed a Certification of Interested Entities or Persons certifying that “no listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding.” (ECF No. 16). On March 22, 2019, Defendants filed an Amended Certification to include the newly named parties. (ECF No. 198). On October 9, 2018, Lead Plaintiff filed his Certificate of Interested Entities certifying that as of the date of the Certification, no such interest is known other than that of the named parties to the action and Lead Plaintiff. (ECF. No. 44).

20 **XX. PROFESSIONAL CONDUCT**

21 All counsel of record for the Parties certify that they have reviewed the Guidelines for Professional Conduct for the Northern District of California.

22 **XXI. OTHER**

23 At this time, the Parties can think of no other matters that may facilitate the just, speedy and inexpensive disposition of this matter, but agree to meet and confer in good faith about such opportunities, should they arise.

1 Dated: May 22, 2020

LEVI & KORSINSKY, LLP

2 By: /s/ Adam M. Apton
3 Adam M. Apton

4
5
6
7 Adam M. Apton (SBN 316506)
8 Adam C. McCall (SBN 302130)
9 388 Market Street, Suite 1300
10 San Francisco, CA 94111
11 Telephone: 415-373-1671
12 Facsimile: 212-363-7171

13
14 Nicholas I. Porritt (admitted *pro hac vice*)
15 1101 30th Street NW, Suite 115
16 Washington, D.C. 20007
17 Telephone: (202) 524-4290
18 Facsimile: (212) 363-7171

19
20 *Attorneys for Lead Plaintiff Glen Littleton and
21 Lead Counsel for the Class*

22 Dated: May 22, 2020

23 FENWICK & WEST LLP

24 By: /s/ Dean S. Kristy
25 Dean S. Kristy

26
27 Dean S. Kristy (CSB No. 157646)
28 Jennifer C. Bretan (CSB No. 233475)
15 555 California Street, 12th Floor
16 San Francisco, California 94104
17 Telephone: (415) 875-2300
18 Facsimile: (415) 281-1350

19
20 *Attorneys for Defendants Tesla, Inc., Elon Musk,
21 Brad W. Buss, Robyn Denholm, Ira Ehrenpreis,
22 Antonio J. Gracias, James Murdoch, Kimbal Musk,
23 and Linda Johnson Rice*

24 Pursuant to Civil Local Rule No. 5-1(i)(3), all signatories concur in filing this Joint Case
25 Management Statement.

26 Dated: May 22, 2020

27 By: /s/ Adam M. Apton
28 Adam M. Apton

29 ***

The above JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated:

Honorable Edward M. Chen
UNITED STATES DISTRICT JUDGE